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Common Carriers--Bill of Lading as Prima Facie Evidence of Receipt of Goods in Good Condition--Measure of Damages (Schwalb v. Erie R. R., 161 Misc. 743 (1937))

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and properly over the road." [3] The courts have decided many cases involving the aforementioned proposition, but other issues were also present.[4] In the instant case, however, the court for the first time was presented solely with the question of liability for seating accommodations.

The New York courts have merely required the common carriers to use reasonable care in supplying seating capacity for those whom it may duly anticipate will use its service.[5] What will be reasonable care, under one set of circumstances and not so under another, is usually a question of fact for the jury. Other jurisdictions hold that the care required is that degree of prudence which would be used by a very cautious and competent person under similar circumstances.[6] As early as 1866, the court in the case of *Willis* v. *Long Island R. R.*[7] recognized that such proper accommodations as is the duty of the common carrier to provide, means a seat for each passenger and not standing room in the passageway.

A passenger does not waive his rights to damages as a result of discomfort, by staying on the train until it reaches its destination, where he is given no notice, express or implied, of the carrier's inability to adequately transport him.[8] And conversely, if he is forewarned of the insufficient transport arrangements, no damages will lie.

M. S. M.

COMMON CARRIERS—BILL OF LADING AS PRIMA FACIE EVIDENCE OF RECEIPT OF GOODS IN GOOD CONDITION—MEASURE OF DAMAGES.—Plaintiff instituted an action against a common carrier of goods in interstate commerce for damage to two carloads of grapes in transit. The grapes were packed in standard containers with open tops, so as to permit ventilation and inspection. The injury com-

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[3] Willis v. Long Island R. R., 34 N. Y. 670 (1866).

[4] Willis v. Long Island R. R., 34 N. Y. 670 (1866); Thorpe v. N. Y. Central R. R., 76 N. Y. 402 (1879); City & Newtown R. R., 87 N. Y. 67 (1881); Campbell v. Pullman Co., 169 N. Y. Supp. 1087 (1918).

[5] Haidenbergh v. St. Paul M. & M. R. R., 39 Minn. 3, 38 N. W. 625 (1888).

[6] Galveston v. Morris, 94 Tex. 505, 61 S. W. 709 (1901); Intern. R. R., 20 Tex. Civ. App. 587, 50 S. W. 732 (1899); St. Louis S. W. R. R. v. Tittle, 53 Tex. Civ. App. 220, 115 S. W. 640 (1909).

[7] 34 N. Y. 670 (1866).

[8] Alabama Great South. R. R. v. Gilbert, 6 Ala. 372, 60 So. 542 (1912); Evansville v. Duncan, 28 Ind. 441 (1867); Hallow v. Louisville R. R., 290 Ky. 287, 272 S. W. 740 (1925); Purcell v. Richmond R. R., 108 N. C. 414, 12 S. E. 954 (1891). Lack of notice to the passenger that adequate seating will not be provided, with the choice that necessarily follows of either accepting what the carrier is able to furnish or refusing it, implies an undertaking to supply fully sufficient accommodations. In the instant case, the plaintiff was led to believe, affirmatively, that a proper seat would be furnished him.

plained of, consisted of damage to the containers and contents which was caused by physical external forces, and was readily ascertainable at the destination. Plaintiff offered in evidence bills of lading of the initial carrier which acknowledged receipt of the property "in apparent good order, except as noted (contents and condition of contents of packages unknown)." No exceptions were noted. Plaintiff proved the market value of the shipments at destination in the condition in which they were delivered and in the condition in which they should have been delivered. The disposal of the damaged portions was in accordance with the usage and custom of the trade. Defendant moved to set aside the verdict on the grounds: (1) no evidence of condition at shipping point; and (2) plaintiff did not establish the extent of his damages. *Held,* the bills of lading were *prima facie* evidence of shipment of the goods in good condition, and plaintiff's proof of damages was sufficient for the jury to assess damages. *Schwalb* v. *Erie R. R.,* 161 Misc. 743, 293 N. Y. Supp. 842 (1937).

A bill of lading is a receipt for the goods, a contract for their carriage and a documentary evidence of their title.[1] In an action for injury to the goods, the burden is on the plaintiff to show that they were in good condition when delivered to the carrier, and that the bad condition complained of resulted while the goods were in the carrier's possession.[2] However, if the plaintiff proves that the goods were in good condition at the time of delivery to the common carrier, a presumption of continuance will result in his favor.[3] If the condition of the goods was apparent on ordinary inspection, a *prima facie* presumption that the goods were received by the carrier in good condition arises when the carrier issues a bill of lading without objection of exception noted therein.[4] When the bill of lading contains a recital that the contents and condition of the shipment are unknown there will be no presumption as to the condition not apparent on ordinary inspection,[5] but the condition of the goods being ascertainable on casual inspection the clause "contents and condition unknown" becomes inapplicable and the presumption arises.[6]

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[1] Ellis v. Willard, 9 N. Y. 529 (1854); Meyer v. Peck, 28 N. Y. 590 (1864); American Cotton Products Co., Inc. v. N. Y. Central R. R., 142 Misc. 821, 225 N. Y. Supp. 672 (1932).

[2] Clark v. Barnwell, 12 How. 282 (U. S. 1851); Miller v. Hannibal & St. J. R. R., 90 N. Y. 430 (1882); Jean v. Flagg, 45 Misc. 421, 90 N. Y. Supp. 289 (1904); E. C. Fuller Co. v. Penna. R. R., 61 Misc. 599, 113 N. Y. Supp. 1001 (1909).

[3] Remington v. Barrett, 235 N. Y. 519, 139 N. E. 717 (1923).

[4] Carleton v. Union Transfer Co., 137 App. Div. 225, 121 N. Y. Supp. 997 (1st Dept. 1910); Foley v. Lehigh Valley R. R., 96 N. Y. Supp. 182 (1905).

[5] Dworkwitz v. N. Y. Central R. R., 230 N. Y. 188, 129 N. E. 230 (1920); Josephy v. Pan. & S. F. R. R., 235 N. Y. 306, 139 N. E. 277 (1923); Nelson v. Stephenson, 12 N. Y. Super. 538 (1856).

[6] Sprotte v. Del., L. & W. R. R., 90 N. J. L. 720, 101 Atl. 518 (1917); Leonard v. Penna. R. R., N. Y. L. J., April 15, 1932, p. 2088, App. Term, 1st Dept; Leonard v. Atchison, T. & S. F. R. R., N. Y. L. J., Dec. 19, 1936, p. 2288, App. Term, 1st Dept.

In the absence of special contract, the extent of damages is the difference between the market value of the shipment at destination in the condition in which tendered to the consignee and the condition in which it was delivered to the carrier, the damaged portions being disposed of in accordance with the usage and custom of the trade.[7] Consignee must accept the damaged goods and take all reasonable steps to minimize damages, unless the shipment is so damaged as to be valueless. Consignee-plaintiff is then entitled to be put in as good a position as he would have been had the defendant carrier delivered the shipment uninjured, regard being had in applying the measure of damages to the use and the purpose for which the shipment was intended.[8]

In the instant case, the plaintiff having met both the requirements of "condition" and "damages", the judgment was correctly rendered.

W. D. D.

CONSTITUTIONAL LAW—DIRECT AND INDIRECT EFFECT UPON COMMERCE—DUE PROCESS.—Respondent corporation is one of the largest manufacturers of steel in America. It receives most of its raw materials from, and ships seventy-five per cent of its products to states other than Pennsylvania in which it has its principal mills. It employs more than a half million men. Respondent discharged nine men, allegedly for engaging in union activities. All of the discharged men were engaged in manufacturing in the respondent's Pennsylvania mills. The discharged men appealed to the National Labor Relations Board which found the respondent had violated the National Labor Relations Act[1] by engaging in unfair labor practices affecting commerce. The Board ordered the respondent to offer reinstatement to the discharged men and to make good their losses in pay. Upon failure of the corporation to comply, the Board petitioned the Circuit Court of Appeals to enforce the order. The Court denied the petition holding the Act unconstitutional in so far as it affects manufacturing or

[7] 10 CORPUS JURIS 395, § 606; Chicago, M. & St. P. R. R. v. McCaull-Dinsmore Co., 253 U. S. 97, 40 Sup. Ct. 504 (1920); Kilthau v. International Mercantile Marine Co., 245 N. Y. 361, 157 N. E. 267 (1927); King v. Sherwood, 22 App. Div. 548, 48 N. Y. Supp. 34 (2d Dept. 1897); Porter v. Penna. R. R., 217 App. Div. 49, 215 N. Y. Supp. 727 (7th Dept. 1926); Perkel v. Penna. R. R., 148 Misc. 284, 265 N. Y. Supp. 597 (1933); Crinella v. Northwestern Pac. R. R., 85 Cal. App. 440, 259 Pac. 774 (1927).

[8] Perkel v. Penna. R. R., 148 Misc. 284, 265 N. Y. Supp. 597 (1933).

[1] Act of July 5, 1935, 49 STAT. at L. 449, c. 372, 29 U. S. C. A. § 151 (1935); (1936) 10 ST. JOHN'S L. REV. 359 (discussion of provisions of bill). Labor is guaranteed the right to organize, and employers are forbidden to interfere with labor's rights. Such interference is termed an unfair labor practice.